
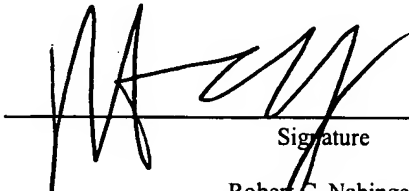




FR Fish & RICHARDSON P.C.

PTO/SB/33 (07-05)
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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number: 00216-368004/OB-84D
<p>I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, Box 1450, Alexandria, VA 22313-1450.</p> <p>April 18, 2006 Date of Deposit</p> <p> Signature</p> <p>Sherry L. Hunt Typed or Printed Name of Person Signing Certificate</p>	Application Number 10/036,022	Filed December 26, 2001
	First Named Inventor Michael F. Roberts	
	Art Unit 1744	Examiner Mark Spisich
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a Notice of Appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record (Reg. No.) 33,431</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.</p>		
<p><input checked="" type="checkbox"/> Total of 4 pages are being submitted (including this page)</p>		


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Robert C. Nabinger
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Telephone number
April 18, 2006
Date



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Michael F. Roberts et al. Art Unit : 1744
Serial No. : 10/036,022 Examiner : Mark Spisich
Filed : December 26, 2001
Title : GUM MASSAGING ORAL BRUSH

MAIL STOP AF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REMARKS SUBMITTED WITH PRE-APPEAL REQUEST FOR REVIEW

A request for a review of identified matters on appeal is hereby submitted with a Notice of Appeal. Review of identified matters by a panel of Examiners is requested because the rejections of record are clearly not proper in view of clear legal and factual deficiencies. In particular, Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness.

Claims 52-54 and 57 are pending; claim 52 being the only claim in independent form. All claims stand rejected as being obvious over Lion Corporation, Japanese Unexamined Utility Model Application No. 1-72128 ("J-128").

Claim 52 is directed to an oral brush. The oral brush includes, in pertinent part, a brush portion that includes at least one molded elastomeric element. Applicants have found that molding elastomeric bristles provides bristles that are gentle and that have surprisingly good wear resistance.

The J-128 utility model generally discloses an oral cleaning implement employing filaments composed of an engineering elastomer. The engineering elastomer is a melt spinnable (i.e., extrudable) thermoplastic elastomer (see page 4, line 4 of the translation). The two general types of engineering elastomers disclosed in the J-128 utility model are polyether-based thermoplastic elastomers and polystyrene-based thermoplastic elastomers. All of the elastomeric

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bristles disclosed in the J-128 utility model are melt spun (extruded), or melt spun and drawn (i.e., stretched). The J-128 utility model does not disclose or suggest employing molded elastomeric elements, as claim 52 requires.

To establish a *prima facie* case of obviousness, the Examiner must establish (1) that the prior art reference (or references when combined) teach or suggest all the claim limitations; and (2) that there is some suggestion or motivation, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or references, or to combine reference teachings; and (3) that there is a reasonable expectation of success.

With regard to (1) above, Applicants respectfully submit that J-128 does not teach or suggest all the limitations of claim 52. In particular, J-128 does not teach or suggest a molded elastomeric element. The Examiner states at page 3 of the January 18, 2006 final Office Action that “the term ‘molding’ broadly describes a variety of processes used to form plastic (or flowable) materials, including extrusion.” Applicants understand that during examination of a patent application, the pending claims must be given the broadest *reasonable* interpretation consistent with the specification” (emphasis added; MPEP 2173.05). Applicants respectfully submit that construing extrusion as a subset processing technique under molding is simply not a *reasonable* interpretation of the words “molding” and “extrusion”. Applicants’ specification makes it clear that these two techniques are different, and someone of ordinary skill in the art would immediately understand that “molding” and “extrusion” are different techniques and that “extrusion” is in no way broadly described by the term “molding”.

Furthermore, a person of ordinary skill in the art would understand that “molded” is also a structural distinction since it is known to persons of ordinary skill in the art that molding yields a different *microstructure* than extruding, even though the extruded and molded parts may *look* similar from a *macroscopic* point of view. These distinctions were addressed in Applicants’ reply filed November 2, 2005.

With regard to (2) above, there is no motivating disclosure in J-128 that would have led one of ordinary skill in the art to mold an elastomeric element rather than extrude and draw the elastomeric element, as the J-128 reference teaches. In fact, since molding and extruding are

disparate techniques, the J-128 disclosure actually teaches away from molding by teaching extrusion.

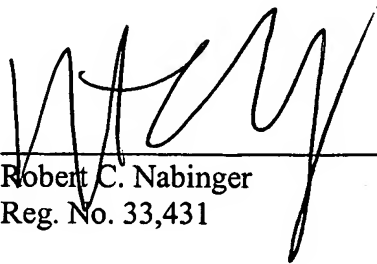
Finally, with regard to (3) above, there would not have been a reasonable expectation of success because persons of ordinary skill in the art would understand that bristles that need to be extruded and drawn (as the J-128 reference teaches) are unlikely to be suitable when molded because the extrusion and drawing technique imparts molecular orientation to the polymeric material that molding simply does not. For example, ordinary nylon 612 toothbrush bristles (monofilaments) are extruded and drawn to improve their bend recovery properties and to improve their wear resistance. A person of ordinary skill in the art knows that molded nylon 612 toothbrush bristles would not be suitable because they would not have the appropriate molecular orientation to provide the needed wear resistance.

Applicants respectfully submit that the Examiner has not established even a single element of the required three elements needed to establish a *prima facie* case of obviousness. As such, Applicants respectfully submit that claims 52-54 and 57, as presented in Applicants' March 8, 2005 Response to Office Action, are in condition for allowance.

Please apply any charges or credits to deposit account 06-1050, referencing Attorney Docket No. 00216-368004.

Respectfully submitted,

Date: April 18, 2006



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